

Attorney Docket No.: 44352-0009-00-US
Application No. 10/580,947
Reply to Office Action Dated: October 30, 2007
Amendment Dated: March 25, 2008

R E M A R K S

Reconsideration and reexamination of the present application are respectfully requested in light of the foregoing amendments and following remarks.

1. Status of the Claims

Claims 1-9 are pending. Claims 1-9 stand rejected. New claims 10-11 are added by entry of the present amendment.

2. Support for the Amendments

The amendments to the specification correct obvious typographical errors or clarify that LYPOZYME is a trademark.

The amendment of claim 1 to recite “about 80-95% by weight of diglycerides” is supported at least at Table 3 of the specification (83.2% by weight diglycerides). The use of the word “*about*” is impliedly supported by the degree of experimental error commonly associated with measuring weight percent of diglycerides. The remaining amendments reword the claim for added clarity.

The amendments to claims 2-9 reword the claims for added clarity, remove unnecessary plural terms, or comport the claim language more closely to preferred practice in the United States. In particular, the amendment to claim 7 deletes a phrase directed to an intended use.

New claim 9 is impliedly supported by “*other CLA isomers*” is the claims, which include the CLA listed at page 1, lines 21-28. New claim 10 is supported at Table 2 (77.6% content CLA). The use of the word “*about*” is impliedly supported by the degree of experimental error commonly associated with measuring percent content of fatty acids. The amendments thus do not add subject matter that is unsupported in the originally filed disclosure.

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3. Request for Acknowledgement of Certified Priority Documents

Applicants respectfully request an acknowledgement of Applicant's claim to priority under 35 U.S.C. § 119 and an indication that the certified priority documents have been received in this application.

4. Acknowledgement of Information Disclosure Statement

Applicants note with appreciation the acknowledgement and consideration of the Information Disclosure Statement filed May 30, 2006.

5. Objection to the Specification

The specification is objected to for a typographical error. To expedite prosecution, Applicants correct this error and several other typographical errors, as well as identify LYPOZMYE as a trademark by using all capital letters. The objection thus may be withdrawn.

6. Rejection under 35 U.S.C. § 103

Claims 1-9 are rejected under 35 U.S.C. § 103 as allegedly obvious over U.S. Patent No. 7,056,949 ("Koike") in view of U.S. Patent No. 6,184,009 ("Cain"). Applicants traverse the rejection.

Whether a claim is obvious is based on an objective analysis of the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of skill in the pertinent art. *See Graham v. John Deere Co.*, 383 U.S. 1, 15-17 (1966). All limitations of the claimed invention must be taught or suggested by the prior art to establish *prima facie* obviousness. *In re Royka*, 490 F.2d 981, 985, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974).

In the present case, Koike teaches an oil/fat composition containing diglyceride. Table 1 of Koike appears to depict parts by weight of various compositions. (The columns add up to over 100, so the numbers cannot represent weight percentages.) Composition 4 of Koike contains the highest proportion of diglycerides. From the relative number of parts by weight, the proportion of diglycerides appears to be about 43 weight percent of the composition (85.1/(13.5

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+ 85.1 + 1.1 + 0.3 + 0.2 + 10.5 + 57.0 + 1.7 + 1.0 + 21.9 + 3.7 + 1.8) x 100, not counting units of "color"). Koike elsewhere teaches that the compositions may contain diglycerides at 0.1 to 49.9 weight percent. (E.g., Koike, col. 2, line 38; col. 3, lines 25-26.)

Cain teaches various compositions containing CLAs in the form of glycerides. The diglyceride content of these compositions ranges, where the highest reported value appears to be 44.5 weight percent in the partial glyceride fraction. (Cain, Table 1b; *see also* Examples 6, 8, 9, and 10.) In other compositions, Cain discloses a content of CLAs as high as 63.2 weight percent. (Cain, Table 4.)

Applicants were the first to realize the advantage of providing compositions containing a diglyceride of CLA as a main ingredient. *See, e.g.*, Specification, page 4, line 10, through page 5, line 4. By contrast, the combination of Koike and Cain does not teach or suggest modifying the disclosed compositions therein to contain about 80-95% by weight of diglycerides, as claimed. Because the combination of references does not or suggest every element of the claimed invention, the Office has not established a *prima facie* case of obviousness. *See Royka*, 490 F.2d at 985. The rejection accordingly should be withdrawn.

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C O N C L U S I O N

In conclusion, this is believed to be in full response to the outstanding restriction requirement. Should any issues remain outstanding or if there are any questions concerning this paper, or the application in general, the Examiner is invited to telephone the undersigned representative at the Examiner's earliest convenience. Should any outstanding fees be owed or overpayments credited, the Commissioner is invited to respectively charge or credit Deposit Account No. 50-0573.

Respectfully submitted,

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